

## REMARKS

The present amendment is responsive to the Office Action mailed in the above-referenced case on June 03, 2004. Claims 1-20 are presented for examination. In the Office Action the Examiner has rejected claims 1-20 under 35 U.S.C. 103(a) as being unpatentable over Newhall (US 5,682,479) hereinafter Newhall.

Applicant has carefully noted and reviewed the rejections, references, and the Examiner's comments and herein provides arguments to more particularly point the subject matter regarded as inventive, distinguishing unarguably over the reference of Newhall as cited and applied by the Examiner.

Regarding claim 1, the Examiner states that Newhall teaches monitoring port status on a continuing or periodic basis. Applicant respectfully disagrees. Newhall teaches a configuration element 1012 which stores information about routers, ports and even whether the ports are active etc.. Applicant argues that there is no teaching in Newhall of monitoring, either continuous or periodic, of said ports by the configuration element or any other means.

The Examiner states that Newhall teaches updating a port status table as active or failed (col. 13, lines 1-7). Applicant respectfully disagrees with the Examiner's interpretation of Newhall. Column 13 lines 1-7 of Newhall teaches a configuration element 1012. As argued above this element only stores architectural type information of routers in the system and fails to teach maintaining a table of port status as claimed. Further, applicant argues that Newhall fails to teach checking the table by circuitry, because Newhall fails to teach the table.

The Examiner states that Newhall teaches sending a received packet to a predestined port if the port is listed in the table as active, and sending the received packet to the alternative destination if the port is listed in the table as failed (col.

21, line 51 - -col. 22, line 13. Applicant respectfully disagrees. Applicant argues that the portion of Newhall referenced by the Examiner teaches a system for generating routes for packets by accessing a database which may store a table of information including node pairs and router ID's, wherein the information in the database can be used to determine the preferred route.

Applicant argues the database of Newhall falls short of monitoring ports, updating a table, and determining routes for packets based on the port status as claimed. Applicant argues that in Newhall port failure is determined by packet routing failure, not by monitoring ports as claimed. Applicant's invention teaches a method and system wherein initial packet transmit failure is not required to determine a failed port as in Newhall. Applicant argues that there is absolutely no teaching or suggestion in the art of Newhall of maintaining alternative routes in a table as claimed.

The Examiner does admit on page 3, item 5. of the Office Letter that Newhall does not teach a status table listing an alternative destination for each port along with the active or failure status. The Examiner offers that Newhall does teach an alternative route upon failure. The Examiner asserts that it would have been obvious to adapt Newhall's system to include a table for active, failure and re-direct ports to reduce complexity within the system.

Applicant strongly traverses the Examiner's above logic for obviousness.

Applicant points out to the Examiner that in order to support the conclusion that the claimed invention is directed to obvious subject matter, either the reference must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious **in light of the teachings of the reference**. Both the suggestion to make the claimed combination and the reasonable expectation of success must be founded in the prior art and not in applicant's disclosure. Applicant argues that the concept of creating and maintaining a port status table is only suggested in applicant's invention. Newhall sends packets out into the Network to determine active and failed ports, therefore,

there is absolutely no motivation in the art of Newhall to maintain a status table as claimed.

Applicant's claim 1 recites sending the received packet to the predestined port if the port is listed in the table as active, and sending the received packet to the alternative destination if the port is listed in the table as failed. As argued above, Newhall fails to teach a port status table to assign specific alternative destination ports to working ports.

Applicant believes that claim 1, as argued above, is patentable over the art of Newhall provided by the Examiner. Claims 2-6 are patentable on their own merits, or at least as dependent upon a patentable claim.

Regarding claims 7 and 13, applicant believes the arguments provided above easily serve to argue the patentability of these independent claims as they hold limitations included in said argument. Claims 8-12 and 14-20 are patentable on their own merits, or at least as dependent from a patentable claim.

As all of the claims, as argued, are clearly shown to be patentable over the art of Newhall, applicant respectfully requests that the rejections be withdrawn and that the case be passed quickly to issue.

If any fees are due beyond fees paid with this amendment, authorization is made to deduct those fees from deposit account 50-0534. If any time extension is needed beyond any extension requested with this amendment, such extension is hereby requested.

Respectfully Submitted,  
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by



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